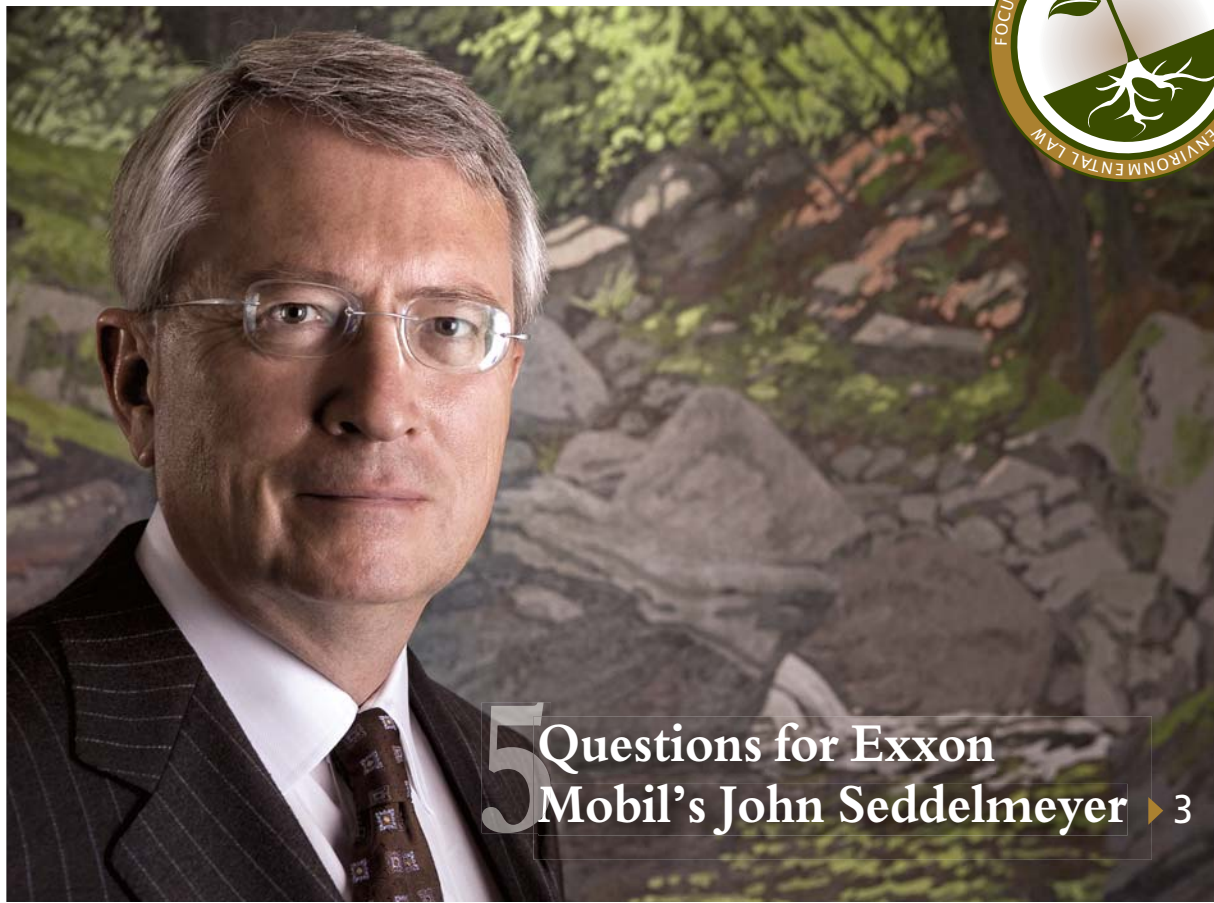


INDIANA LAW



Global conferences ▶ 10



5 Questions for Exxon Mobil's John Seddelmeyer ▶ 3

The changing climate of global warming

by Debbie O'Leary

Scientists, climatologists, political leaders, and industry executives now concur. The earth's climate is changing in ways that will potentially affect every species on the planet, and human activity plays a role in this change.

Far less agreement exists on the next steps in responding to global warming. According to environmental law Professor John Applegate, climate change offers a unique opportunity to refine the meaning of the Precautionary Principle, a tenet of international environmental law widely accepted in much of the world, but less so in the United States. The Precautionary Principle asserts that if there is reason to believe that an activity could cause severe or irreversible harm, governments should be empowered to take action to control the activity in advance of full scientific certainty about the nature and scale of the consequences.

“The government doesn't operate in a vacuum. We are all part of the framework that will determine our future.”

Jeffrey Petrich, JD'84

“Residual uncertainties about global warming consequences are an inappropriate reason to fail to take preventive or mitigation action,” said Applegate, whose current research analyzes the Principle. “Affirmative obligations imposed by the Principle require us to take actions to avoid an irreversible catastrophe. The exact nature of those actions is open to debate, and our response undoubtedly will — and should — evolve as we learn more about the consequences and remedies for global warming.” ▶ 6

Warming the wild

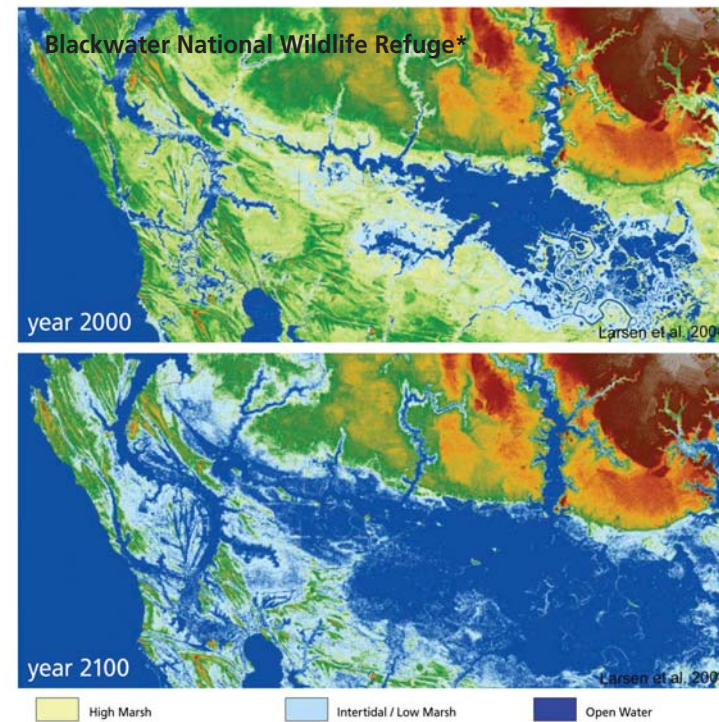
How will the plants, animals, and other organisms inhabiting 96 million acres of U.S. refuge lands adapt to warmer climes? While politicians debate, Indiana Law's Robert Fischman is grappling with this reality.

by Sarah Preuschl

As natural habitats collide with shifting climate zones, uncertainty prevails. Yet, controversies churning through the issue of climate change are absent from the study of global warming and wildlife habitats by virtue of sheer evidence.

“Adaptation in the refuge system is happening now,” Professor Robert Fischman said. Climbing temperatures are already influencing refuge flora and fauna from declining spruce forests to migratory birds. “Even in the best-case scenarios, we can expect and are already experiencing the results of the anthropogenic heating of the planet.”

Fischman's well-known scholarship on wildlife refuge policy and management brought scientists ▶ 7



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PRESORTED FIRST-CLASS

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- 9 ▶ *Top environmental faculty*

\$3 MILLION GIFT NAMES ENTREPRENEURSHIP CLINIC



David Elmore, JD'58, and his son, D.G. Elmore, JD/MBA'84, announced a \$3 million gift that will fund scholarships for Entrepreneurship Law Clinic students, joint-JD/MBA candidates, and students demonstrating a strong interest in business law.

Recognizing this significant commitment, Indiana Law announces the formal renaming of the Entrepreneurship Law Clinic. The Elmore Entrepreneurship Law Clinic's grand opening celebration is set for Oct. 5.

Unique in the country, the clinic is a collaboration of the School of Law and the IU Kelley School of Business. The capstone experience provides JD/MBA joint-degree students opportunities to assist high-growth potential start-up ventures.

IRAQ AMBASSADOR TO TEACH IN 2007-08



The principal drafter of Iraq's interim constitution will lend his expertise to Indiana Law for the 2007-08 academic year as a visiting professor.

Ambassador Feisal Amin Istrabadi, a 1988 Indiana Law alumnus, will teach courses on transitional justice in Iraq and on the trial of former Iraqi President Saddam Hussein.

As the Deputy Permanent Representative of Iraq to the United Nations in New York with the rank of Ambassador Extraordinary and Plenipotentiary, he has been instrumental in the development of a sovereign Iraqi government.

SELECTED FALL EVENTS

- Aug. 5-7** Second Annual Big 10 Aspiring Scholars Conference
- Oct. 26-27** Society for Evolutionary Analysis in Law (SEAL) Conference
- Nov. 15** Family Law and Psychology Conference

INDIANA LAW

Dean
Lauren K. Robel, JD'83

Director of Communications and Marketing
Debbie O'Leary

Editor
Sarah J. Preusch

Design
Mediaworks

Photography
Ann Schertz, Patti Koski, IU Photographic Services, Charlie Westerman

Send letters to:
Indiana University
School of Law
Bloomington, IN 47505

For change of address:
Indiana University
School of Law
Attn: Office of Alumni & Development
Bloomington, IN 47505
lawalum@indiana.edu
(877) 286-0002

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INDIANA LAW is a semiannual publication of Indiana University School of Law—Bloomington.

Collaboration fuels world change



Together, Indiana Law and IU's School of Public and Environmental Affairs inform the powerful translation of science into policy and law.

Global climate change is a complex phenomenon, and taming it requires enlistment of a host of disciplines. As this inaugural issue of *Indiana Law* demonstrates, Indiana University is well positioned to make important contributions to solutions for global warming. And the deep connections and longstanding joint degrees between Indiana Law and the School of Public and Environmental Affairs permit us to provide an education that shapes lawyers capable of addressing the interdisciplinary challenges that are inherent in translating science into policy and law.

The conversation between the two schools comes naturally. Professor Lynton Keith Caldwell, one of the 20th century's most distinguished scholars in the fields of environmental policy, law, science, and administration, was a catalyst for SPEA's creation. Caldwell moved easily and creatively between the worlds of policy, science, and law. He was responsible for important parts of the groundbreaking National Environmental Policy Act of 1969, particularly the requirement for environmental impact studies, and his presence helped the Law School recruit such strong environmental teachers and scholars as Richard Lazarus, now at Georgetown, and Dan Tarlock, now at Chicago-Kent.

Today, the relationship between the two schools continues to thrive, and faculty members such as Jim Barnes, Rob Fischman, John Applegate, Vicky Meretsky, and Ken Richards bring legal, scientific, and policy analyses to bear on issues across a spectrum of environmental challenges. Their expertise allows students at both schools to see environmental problems whole, rather than piecemeal.

This issue of *Indiana Law* suggests the power of these ongoing collaborations, both in terms of the research produced and the teaching of our students. I hope you enjoy reading.

Lauren Robel

Lauren K. Robel, JD'83
Dean and Val Nolan Professor of Law

FEATURED LECTURE

“You can't go to a meeting of lawyers or judges today and swing a tuna without hitting on the concerns about judicial independence and confidence in the courts.”

Charles Geyh, John F. Kimberling Professor of Law and nationally recognized scholar on issues involving the judiciary



This spring, a full house enjoyed Geyh's lecture, "Preserving Public Confidence in the Courts in an Age of Individual Rights and Skepticism," to inaugurate the John F. Kimberling Professorship. Visit www.indiana.edu/ourcommunity for video and MP3 audio.



Photos courtesy of Exxon Mobil

**Q&A: John Seddelmeyer, JD '74
Exxon Mobil Assistant General Counsel**



Interview by Debbie O'Leary

Indiana Law alumni across the globe are addressing important aspects of the climate change debate. With regard to this controversial issue, it's possible no one is more strapped into the proverbial hot seat than Exxon Mobil's Assistant General Counsel for Legal Services John Seddelmeyer, JD'74. He manages groups of attorneys working on a wide range of issues from operations to the Valdez oil spill clean-up and, currently, on the mitigation of greenhouse gas emissions and the development of advanced energy technologies to reduce future emissions. Seddelmeyer, who serves on the School's Environmental Law Advisory Board, recently discussed global warming and his company's role in this exclusive interview.

Q In an article in the Feb. 10 issue of the Washington Post, Exxon Mobil representatives say the company has been misunderstood as having denied the existence of climate change. What is the company's position on the issue?

A Our position is that there is a risk human activity is contributing to climate change. According to the Intergovernmental Panel on Climate Change, the earth's climate has warmed on average about 0.7 C in the last century. Many global ecosystems, especially polar areas, are showing signs of warming. Carbon dioxide emissions have also increased. Emissions from fossil fuels and land use changes are an important source of these emissions.

We believe the risks warrant action now. Policies should promote energy efficiency, deploy existing technologies that reduce greenhouse gases, and support research and development of new technologies.

In our view, effective approaches will maximize the use of markets, promoting global participation and facilitating the rapid spread of successful initiatives. Just as technology has driven progress in our industry, I am confident that future technology advances will both expand our understanding of the climate system and enable an effective response. But, we must frame the discussion in terms of the realities we face — the growing demand and need for affordable, reliable energy to enable the world's consumers to achieve genuine improvements in their quality of life.

Policy measures adopted today will have far-reaching implications. We must consider the potential impacts on future economic growth and quality of life not just for the current generation, but also for our children and grandchildren.

Q What are some of the policies Exxon Mobil has created to effectively and significantly reduce carbon emissions?

A Steps taken at Exxon Mobil since 1999 resulted in CO₂ emissions savings of 11 million metric tons in 2005. That's equivalent to taking two million cars off the road. But we believe we must do more. We must continue to foster and support the scientific research that can lead to technology breakthroughs and deliver new sources of energy with even lower emissions. One example is Stanford University's Global Climate and Energy Project, which Exxon Mobil and other partners are supporting with a collective contribution of \$225 million.

The approaches policymakers adopt to address climate risks are also important. A global approach that promotes energy efficiency, ensures wider deployment of existing emissions-reducing technologies, and supports research into new technologies is needed.

Q How can oil companies work with the auto industry to achieve these goals?

A Because 87 percent of GHG emissions come from consumer use of fuels, we partner with automobile manufacturers to help develop advanced vehicles and fuels. We are currently working on new technologies to improve fuel economy by 30 percent while significantly reducing emissions as well as conducting research on a novel hydrogen production technology for use with fuel cells in automotive and other applications.

Q Please explain the company's partnership with the European Commission study of Carbon Capture and Storage (CCS).

A Exxon Mobil is contributing more than €1 million and providing expert technical guidance to the CO₂ReMoVe project, sponsored by the European Commission Directorate General for Research. Exxon Mobil shares in the ownership of the North Sea Sleipner gas field where more than one million tons of CO₂ have been sequestered each year since 1998. The project aims to provide a sound scientific basis for the certification of future sites for CO₂ storage. CCS could have a major impact on GHGs as it could be applicable to many large-emission sources of CO₂.

Q What do you see as the major issue affecting Indiana Law's future environmental lawyers?

A It seems that environmental law has gone from being a specialized field to being an integral part of most business operations and transactions.

Our biggest challenge is finding ways to maintain and improve worldwide standards of living while protecting the environmental gains made in the past 30 years and expanding those improvements to benefit more people throughout the world.

Clinic interns probe conservation issues

Through the Conservation Law Clinic, added to the curriculum in 2006, students in Indiana Law's acclaimed environmental law program are exploring modern conservation law through client representation. This year, clinic interns tackled a series of complex issues.

TERRESTRIAL CARBON SEQUESTRATION LIABILITIES

What are the liabilities associated with in-j ecting carbon dioxide deep into the earth? Clinic interns conducted research on the topic as a public service. While oil producers have been injecting captured carbon deep underground for years, using terrestrial sequestration of this potential greenhouse gas is an emerging idea.

Even as states implement and explore this tool in the battle against climate change, the long-term effects of terrestrial carbon sequestration are still largely unknown. Exploration of these effects and associated legal responsibilities were subjects for clinic research.

LAND TRUSTS AND DISAPPEARING RIVERS

The clinic provides significant legal support for Indiana land trusts in tax, property, and governance matters. One land-ownership issue this academic year presented a unique problem.

The client purchased property adjacent to a state boundary that was defined by a river. Over time, the river curved and twisted through the land, altering the shape and location of property thought to be owned by the client.

Clinic interns delivered legal analysis on the complex issue and presented the client with several options.

AQUATIC INVASIVE SPECIES LEGISLATION

Through a Great Lakes Protection Fund grant, last year's clinic team completed extensive research on private-sector legal remedies for Great Lakes invasive species. Their look into Michigan's legislation on the issue evaluated tough constitutional questions.

This year, interns refocused their work for Great Lakes United, a nonprofit organization. Research addressed questions of legislative remedies to quell the threat of invasive species in the lakes, considering existing legislation and drafting model legislation.

THE LAW OF CONSERVATION EASEMENTS

Conservation easements convey an estate in land to qualifying organizations, restricting use to purposes consistent with conservation. Clinic students conducted sophisticated work on these tools for a local land trust, exploring their intricacies and preparing legal annotations on the model easement currently in use.

"In a slow-to-change area like property law, these tools are relatively new. Yet, conservation easements can be an attractive and valuable tool for preserving lands," said clinic director Bill Weeks. "The interns' work to gear material for use by lawyers and landowners unfamiliar with these tools will help landowners and their attorneys achieve the level of confidence needed to seriously consider these agreements for their properties."

ON THE WEB

For clinic information, visit www.law.indiana.edu/conservationlaw.

Interested in becoming a Conservation Law Center client? Visit conservationlawcenter.org.



HYMAN, JD'03, RETURNS AS FIRST CENTER FELLOW

With credentials including a PhD in ecology and a varied environmental and legal background, Indiana attorney Jeff Hyman, JD'03, has been selected as the Conservation Law Center's first Fellow. In this role, Hyman will assist in managing the Center and its companion Clinic, represent clients, and advise students.

Hyman's environmental experience includes the environmental think tank Resources for the Future in Washington, D.C., where he analyzed strategies to restore Pacific Northwest salmon populations. He later worked in Corvallis, Ore., as an Environmental Protection Agency contractor. Most recently, Hyman served as counsel at Polk Hyman & Associates in Indianapolis, where he litigated cases involving zoning and agency permitting decisions.

His primary goal for the Center and Clinic is to increase the volume and variety of practice experiences for students. "I plan to reach out to more non-profit organizations in the region to develop a broader client and funding base," Hyman said.

Bill Weeks, CLC director, said Hyman's intellect, training, and energy, along with his experience in private litigation, his service as a law clerk to Federal District Court Judge David Hamilton, and his commitment to conservation add significantly to the Center's capacity to pursue its mission and its collaboration with the Law School.

"We advertised nationwide for this fellowship, and we received many applications," said Weeks. "Jeff's expertise and his PhD in ecology made it impossible not to select him."

Student selected for EPA Honors Program

Armed with a fierce passion for environmental policy change, Mindy Boehr, JD'08, heads for a summer in Washington, D.C.

Photo by Ann Schertz

by Sarah Preuschl

Mindy Boehr grew up on a five-generation family farmstead in Henderson, Neb. In many ways, she embodies Midwest co-ed stereotypes — petite and blonde with a sparkling, upbeat personality.

But cross that wholesomeness with her deep, personal connection to the environment, a degree in biochemistry, and an intense commitment to legislative change, and Boehr's killer instincts surface.

Last summer, she clerked in the Environmental Protection Agency Region 7 Office of Regional Counsel. She analyzed the strength of environmental enforcement cases, drafted legal memoranda on corporate veil piercing, and delegated Clean Air Act programs.

"I prosecuted polluters all summer," she said. "It was incredible."

Heading into her third year, Boehr will spend this summer at the EPA's Washington, D.C., headquarters. She is one of only eight students selected from 350 applicants to the 2007 EPA Honors Program.

"I came to law school to improve environmental policy," she said. Perhaps such ambition is a Boehr family trait. Her father and brother, both farmers, are active in public interest groups; her mother and sister are writers and avid organic gardeners. "I think I grew up with a unique dual perspective on the environment," she said.

Boehr's idea of environmental activism is action. She

wants to use her diverse skills to become an educated lawmaker or legislative aide. These goals emerged at the University of Nebraska and during an internship with U.S. Senator Ben Nelson (D-Neb.). She was a Lancy Scholar researching "The Impact of Water and Water Legislation on Nebraska's Family Farms."

The work brought her a disturbing revelation. "Regulating something like water involves so much science, but so many of the people deciding these laws don't understand the science behind them," she said. So, with her biochemistry degree, she set out for Indiana and its prestigious environmental law program.

Here, she's a vice president for the Environmental Law Society, argued for the Pace Environmental Moot Court Competition, and is a governing board member of the National Association of Environmental Law Societies. In addition to classes, she clerks weekly for Bloomington's Judge Mary Ellen Diekhoff, JD'86, of the Monroe County Circuit Court, Div. 4. Next fall, she is enrolled in the Conservation Law Clinic.

She's confident in her chosen path. "Even as an intern with Region 7, it was clear that attorneys had their thumbs on the fairness scale," Boehr said. "They played a huge role in deciding which public policy issues should be addressed. It was very principled and something to which I aspire." ●

CAREER SUCCESS

"Indiana's program enabled me to look at real environmental issues as well as the development of public policy. In the environmental protection and conservation arena, this understanding has proved invaluable in shaping my career path."

— Nancy Briscoe, JD'89, NOAA Sr. Counsel for Environmental Compliance & Safety

Briscoe is one of hundreds of alumni succeeding in environmental law. More than 25 major firms as well as influential companies and government agencies count on our alumni, including:

- Amoco Corp.
- BASF North America Chemical Co.
- Centers for Disease Control & Prevention
- Charter Life Sciences
- Cinergy Services
- Consolidated Energy Company of New York Inc.
- DLA Piper Rudnick Gray Cary
- Dow AgroSciences LLC
- Eaton Corp. Environmental Health & Safety Management
- Eli Lilly & Co.
- U.S. EPA headquarters & regional offices
- Foley & Lardner
- Freshfields Bruckhaus Deringer, UK
- G.E. Corp.
- Indiana Dept. of Natural Resources
- Louisville Metro Air Pollution Control
- Jenner & Block
- Massachusetts Dept. of Environmental Protection
- National Institutes of Health
- National Oceanic & Atmospheric Administration
- Environmental Counsel, Naval Facilities Engineering Command
- New Mexico Environment Dept.
- Oregon Division of State Lands
- PWI Environmental Inc.
- Procter & Gamble Co.
- Shell Oil Co.
- Sycamore Land Trust
- Texas Natural Resource Conservation Commission
- The Trust for Public Land
- U.S. Dept. of Housing & Urban Development
- Water Watch of Oregon
- Winston & Strawn
- Wisconsin Dept. of Natural Resources



The changing climate of global warming

(continued from cover)

THE POWER OF CAPITALISM

Around the world, countries are making moves to reduce greenhouse gases caused by carbon dioxide and other pollutants. More than 170 countries have ratified the Kyoto Protocol with 35 developed and developing nations committed to reducing carbon emissions by an average of five percent under their 1990 levels by 2013.

One strategy being implemented is the cap-and-trade system, originally introduced in the U.S. under the 1990 Clean Air Act to reduce sulfur dioxide. Under the Kyoto Protocol, environmental regulators established caps on the amount of carbon dioxide released into the atmosphere. Countries whose carbon emissions are lower than their assigned cap can sell their carbon “credits” to countries with higher emissions needs. Additional credits can be earned by helping developing countries implement programs to reduce their emissions.



Andrew Otis, JD '90

“It’s an active, world-wide market — everywhere but here,” said Andrew Otis, JD’90, of Curtis Mallet-Prevost Colt & Mosle LLP in New York. Formerly a policy analyst at the Environmental Protective Agency, Otis played a key policy advisory role in many areas, including global climate change. He also coordinated contributions

from EPA’s Policy Office to President Clinton’s 1992 Climate Change Action Plan.

Now he advises clients on issues associated with emissions reduction credit transactions and is involved with U.S. financial institutions that lend money to international companies to implement carbon-reduction programs. “When I worked at the EPA 15 years ago, we questioned whether this scheme would work,” he said. “It feels like I’ve come full circle.”

Despite the U.S. rejection of Kyoto, state-led and corporate initiatives are popping up around the country. Otis believes this patchwork quilt of state programs will eventually lead to a national program. “Many companies will make money out of a carbon-constrained economy.”

POLITICAL CLIMATE CHANGE

The recent shift in Congressional control brought with it a renewed focus on global warming. The change in direction, said Jeffrey Petrich, JD’84, chief counsel for the U.S. House of Representatives Committee on Natural Resources, has been immediate and intensive.

Speaker of the House Nancy Pelosi asked relevant committees to report climate change legislation by June 1.* “The Speaker has also created a special committee on global warming and energy policy,” he said. “There’s been an incredible flurry of activity.”



Jeffrey Petrich, JD '84

Under previous Congressional leadership, the Energy Policy Act of 2005 focused on producing more oil, gas, and fossil fuels from public lands, explained Petrich, who has worked on the Committee for the past two decades.

“From the end of the Clinton era until now, the Administration has been opening more public lands to development,” he said. The U.S. Department of the Interior, which falls under the Committee on Natural Resources’ jurisdiction, oversees 500 million acres of onshore land and 1.8 billion acres offshore. “In this Congress, there’s been a dramatic shift away from opening more land up for oil and gas to developing alternative sources of energy.”

Committee members will examine issues surrounding carbon sequestration, alternative energy sources, and using public lands for solar development, wind utilization, and geothermal and biomass energy resources. They will also look at the impact of climate change on resources, such as the effects of coastal erosion, acidification of oceans, and changing weather patterns that affect water supplies.

“In considering impacts on fish and wildlife, for example, changes in ocean circulation and declines in sea ice may have significant effects on marine species and ecosystems,” said Petrich.

While many of the overarching questions about the science of climate change have been answered, Petrich expressed disappointment over the length of time involved in the debate. “It’s tragic that the rest of the world is moving ahead of the U.S. But, it’s a positive sign that there is a systematic and aggressive effort in place to develop action plans,” he said. “While there will continue to be obstacles — both political and economic — at least we are not still denying the fact of climate change and, in the process, making it worse.” ●

CITIZENS TAKING ACTION

Andrew Otis, JD’90, and Jeffrey Petrich, JD’84, who both serve on the School’s Environmental Law Advisory Board, agree there are roles for all to play in turning the climate tide.

People shouldn’t underestimate the importance of individual actions, such as switching to compact fluorescent light bulbs, said Otis. “There are simple things individuals can do to make an immediate difference, including performing home energy audits and buying personal carbon credits to offset the emissions we generate as citizens.”

And, adds Petrich, for those passionate about policy, “it’s an incredibly intriguing time to be involved. There are roles for people who are lawyers at oil companies or the EPA — all parts of the system need input on the affected business or economic community. The government doesn’t operate in a vacuum. We are all part of the framework that will determine our future.”



Illustration by Sarah Preusch

* Update: Petrich’s latest project — House Natural Resources Committee bill H.R. 2337 — was introduced in mid-May. It seeks to further carbon sequestration, partially repeal the 2005 Energy Policy Act, and address the effects of global warming on wildlife. At press time, the bill’s fate was undetermined.

Warming the wild

(continued from cover)

and researchers to his door in search of solutions. He contributed this spring to a U.S. Climate Change Science Program report on adaptation strategies. Set for release in December, the report explores the sensitivity of these ecosystems and suggests tools for supporting natural and managed ecosystems in light of global changes.

Sponsored by 13 federal agencies and overseen by the Office of Science and Technology Policy, the Council on Environmental Quality, the National Economic Council, and the Office of Management and Budget, the program addresses a problem that touches lands from Florida’s keys to Midwestern forests to the Alaskan wilderness. For Fischman, the report gets to the core of maintaining and increasing the resilience of ecosystems using tools the law provides.

DOMINO EFFECT

“The sheer size and scope of the refuge system provides a microcosm for how our natural world will react to climate changes,” he said.

A look at refuge ecosystems offers a window to wider-scale impacts, such as the interruption of ecosystem services that decompose wastes, disperse seeds, pollinate plants, recycle soil nutrients, and prevent droughts or floods. According to the Ecological Society of America, finding substitutes for these services would cost trillions of dollars.

Scientists expect other major threats to worsen in scope. Invasive species will displace more native species. This is happening now in the Konai National Wildlife Refuge. Rising sea levels and a surge in storm strength will deeply alter coastal and inland habitats. This is happening now in the Gulf and Atlantic coast refuges.

As a result, reserves meant to protect endangered species face a serious dilemma: does the refuge move with the protected animal or plant, and if so, how?

The report recommends both spatial and temporal strategies for preserving protected habitats: management of resources within refuge boundaries, strategic acquisition and conservation easements to enable transmigration, expanding refuge boundaries, and community education and engagement by refuge managers.

SCHOLARSHIP FOR A CHANGING STANDARD

Recognized for contributions to scholarship as well as to on-the-ground conservation, Fischman’s research is leading the way in wildlife refuge law and policy, strengthening connections between environmental law’s pollution control and resource management fields.

Climate change and refuge systems have been under his magnifying glass for at least 16 years. Fischman’s articles heightened the importance of refuges in the legal academy, and his book, *National Wildlife Refuges: Coordinating a Conservation System through Law* (Island Press 2003), brought non-lawyers into the fray, spurring interdisciplinary collaborations with life scientists and scholars interested in ecological integrity.

His research focus comes full circle in the Climate Change Science Program project because he says climate change will inform future legal and biological challenges. His new casebook, *Federal Public Lands and Resources Law* (forthcoming in 2007), will include for the first time the new legal challenges presented by global warming.

His next project: an intense look at reframing one of America’s legal touchstones — historic benchmarks in environmental law.

“Restoration of historic conditions is a common way of articulating ecological integrity in terms of the law. Climate change presents a tremendous challenge to that concept. It may be impossible to maintain allegiance to historic conditions,” Fischman said.

Bringing law and science together, he’s seeking an answer to one big question: “Moving into a new ecological era, what will be the new standard?” ●



Fischman’s *Managing Biological Integrity, Diversity, and Environmental Health in the National Wildlife Refuges* rated among the TOP 20 environmental law articles published in 2005.

*Cover Illustration, Blackwater National Wildlife Refuge in Chesapeake Bay, Md, shown in current and future forms, could see a drastic shift in landscape due to mid-Atlantic sea level rise.

New faculty bring enterprising research

Coming this fall to Indiana Law: innovative new hires Jody Madeira and Timothy W. Waters



Jody Madeira

Previously a Harvard Climenko Fellow and lecturer in law, Jody Madeira has published on topics including the constitutional rights of transgender individuals, the historiography of sodomy, the possibility of regarding execution as ritual sacrifice, and the social construction of victims' families by the news media in the context of capital punishment.

Her cutting-edge work also involves the narrative construction of pain in personal injury trials, including her most recent research with Oklahoma City bombing survivors to determine the impact of Timothy McVeigh's 2001 execution. Other projects include an interview series to determine the effect victim witness advocates — individuals employed by state departments of corrections to work with murder victims' families until after offenders' execution — have on the capital punishment process.



Timothy Waters

a PhD in cultural studies from University of Pennsylvania's Annenberg School for Communication and a Master's in sociolinguistics from Georgetown.

Timothy Waters' research in public international law, human rights, transitional justice, ethnic conflict, comparative law, and European and Islamic law issues has been published by leading journals, including those of Yale, Harvard, Virginia, and New York University. And the *New York Times*, *International Herald Tribune*, and *Christian Science Monitor* featured his recent op-eds on Iraq, the Balkans, and international justice.

A former Peace Corps volunteer in Hungary, Waters has served as a consultant on legal system reform for the Open Society Institute, United Nations Development Programme, and the Latvian Ministry of Justice, as well as investigating discrimination against minorities for Human Rights Watch. He spent time in Bosnia for the Organization for Security and Cooperation in Europe and as a researcher in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia, where he helped prepare the indictment against Slobodan Milošević.

Waters received his JD *cum laude* from Harvard Law School, his Master's in International Affairs from Columbia University's School of International and Public Affairs, and graduated *magna cum laude* from UCLA with degrees in English literature and media. He has been a visiting faculty member at the University of Mississippi School of Law, Boston University School of Law, and Central European University in Budapest.

Indiana Law tops SSRN

Indiana Law has ranked 14th in the U.S. for new papers on the online Social Science Research Network (SSRN) since 2003, a tie with Illinois. No Big 10 school ranked higher in this measure. In fact, Indiana Law's ranking leads at least 10 top law schools, including Notre Dame (19), University of California—Los Angeles and University of California—Berkeley (tied for 23), Texas (25), Minnesota (31), and Michigan (36).

In addition to its *Indiana University School of Law—Bloomington Legal Studies Research Paper Series*, Indiana Law hosts the Network's 11 Law and Society collections, edited in-house by our faculty.

In 2006–07, the School chalked up more than 8,000 downloads and logged 73 new papers on the network. *The Pride of Indiana: An Empirical Study of the Law School Experience and Careers of Indiana University School of Law—Bloomington Alumni* brought authors Kenneth Dau-Schmidt and Jeffrey Stake No. 1 recognition for downloads in Law and Society. And Joshua Fairfield's "Dragon Kill Points: A Summary Whitepaper," well-received by academics and the gaming community, was recently a top-10 SSRN quarterly download.

LAW & SOCIETY EDITORSHIPS

Our Law & Society presence includes editorships of five existing journals and six new collections.

Family Law, Relations, and Dispute Resolution, edited by Amy G. Applegate

International & Comparative Law, edited by Christiana Ochoa

Private Law, edited by Kenneth Dau-Schmidt

Procedural Law, edited by Jeannine Bell

Public Law, edited by Ajay Mehrotra

New Collections

Courts, edited by Alex Tanford

Legislation, edited by Luis Fuentes-Rohwer

Private Law—Discrimination Law, edited by Jeannine Bell

Public Law—Constitutional Law, edited by Craig Bradley

Public Law—Criminal Law, edited by Joseph Hoffmann

The Legal Profession, edited by William Henderson

FACULTY HIGHLIGHTS

HOFFMANN TALKS REHNQUIST

Joseph Hoffmann appeared in a PBS special titled "The Supreme Court." A former clerk for Justice William H. Rehnquist, Hoffmann was featured in the program's final segment, "The Rehnquist Revolution," which investigated the court's rise as an institution that resolves central questions of American life. "Rehnquist will go down in history as one of the most effective chief justices, universally liked and respected by his colleagues on the court," he said.

HOT OFF THE PRESS

Patrick Baude's *Judicial Jurisdiction: A Reference Guide to the United States Constitution* (Praeger Press)

Craig Bradley's *Criminal Procedure: Recent Cases Analyzed* (West Law School)

FEATURED EXPERTISE

Hannah Buxbaum organized and moderated "Recognition of Same-Sex Marriage: Conflicts Law and Public Policy in a Globalizing World," a panel during the AALS Conflicts Section meeting in Washington, D.C.

Fred H. Cate, who directs the IU Center for Applied Cybersecurity Research, served as lead witness on privacy and security at the Federal Trade Commission's hearing on consumer protection issues in the next decade, held in Washington D.C.

Joshua Fairfield spoke at the Virtual Worlds and Governance panel at State of Play/Terra Nova in New York.

Charles Geyh joined former U.S. Supreme Court Justice Sandra Day O'Connor; *New York Times* reporter Linda Greenhouse;

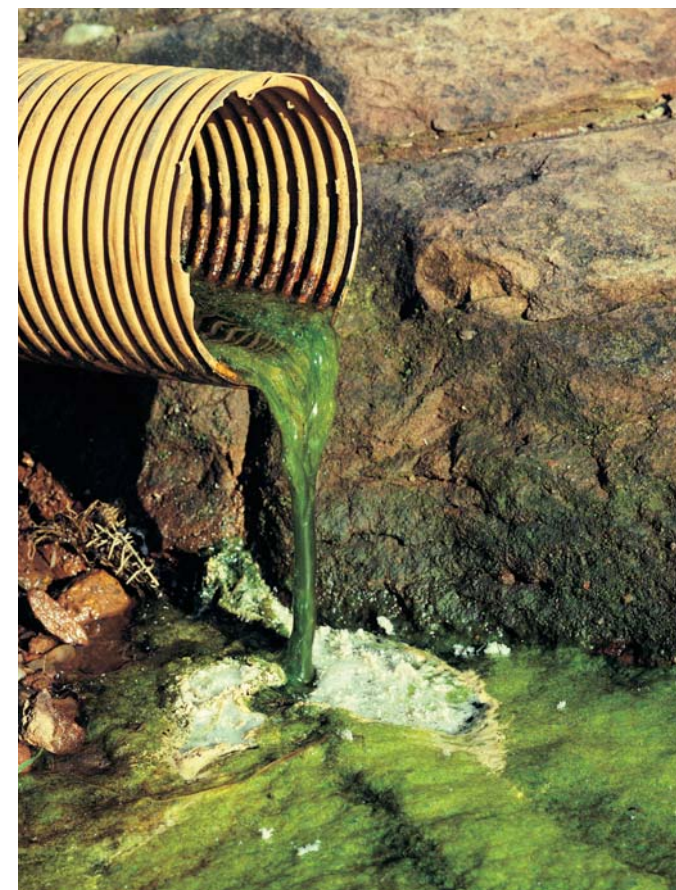
and Judith Kaye, chief judge of the State of New York, as a panelist for "The Independence of the Courts," held during the first-ever joint meeting of the American Philosophical Society and the American Academy of Arts and Sciences in Washington, D.C.

Dawn Johnsen served as a panelist at the AALS Annual Convention, "Emerging Issues in Reproductive Rights," in Washington D.C.



Indiana scholars frame environmental debate

Read on for updates on our faculty's latest scholarship in environmental law.



CHEMICAL REACTIONS: U.S. vs. EUROPEAN REGULATION



Researcher: John Applegate

Investigation: Chemicals are a major industry in Europe, as they are in the United States. In both places, chemicals prove a major source of potential health hazards.

The European approach to this threat differs markedly from U.S. chemical regulation in many ways, including who has the burden of proving safety, the legal pressure for adoption of safer alternatives to existing chemicals, and the generation of safety data about chemicals. These differences are codified in the European Union in REACH (Registration, Evaluation, and Authorisation of Chemicals), a recently enacted statute that presents complex, comprehensive, and ambitious regulation of the manufacture and use of chemicals.

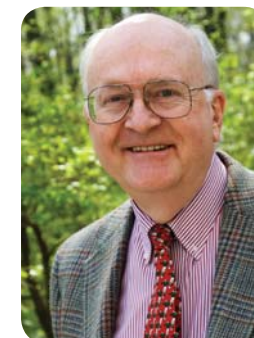
Applegate's work considers how this new European system addresses the problem of missing safety information and the various ways the new system may affect U.S. chemical regulation.

NEW ENERGY AND POLICY SEMINAR

Offered for the first time this fall, the Seminar in Energy Law and Policy (L644) examines the basic structure of the energy industry; trends in energy production; and the laws that guide, promote, and constrain the evolution of this vital sector. Visiting Professor Ken Richards will lead students beyond basic principles and landmark energy legislation to consider law and policy related to renewable energy, deregulation of the electricity sector, oil exploration and extraction, and climate change.

At the IU School of Public and Environmental Affairs, Richards' renowned research in environmental and natural resource economics, law, and management includes current research about National Environmental Protection Act responsibilities, terrestrial carbon sequestration, and the rationality of state-level hazardous waste taxes. He holds a PhD in Public Policy from the Wharton School and a JD from the University of Pennsylvania.

TIDES OF CHANGE FOR U.S. ARMY CORPS



Researcher: A. James Barnes

Investigation: Barnes served on a National Academy of Public Administration panel commissioned by Congress to examine the current system used by the U.S. Army Corps of Engineers for prioritizing its water resource projects. Years of criticism of Corps budgeting came into sharp focus when Hurricanes Katrina and Rita hit in 2005.

The panel, headed by Louisiana State University Chancellor Sean O'Keefe, released a report in March recommending sweeping changes in the way the Corps' budget is produced and ultimately funded. Their goal was to make the Corps a more reliable steward of the nation's critical water resource systems and guardian of its global competitiveness in the movement of waterborne goods.

Panelists recommended that the Corps, the Office of Management and Budget, and Congress move from the current system — which looks at the individual, cost-benefit ratios of local projects — toward a budgeting system with broader focus. The panel said the Corps of Engineers must also take responsibility for the safety of at-risk populations and the health of water-reliant ecosystems.



CARBON CAPTURE AND STORAGE IN THE EXISTING LEGAL STRUCTURE

Researcher: Kenneth R. Richards

Investigation: Three main strategies exist for mitigating net emissions of carbon dioxide — reducing fossil fuel-based emissions by changing the types of fuels used and reducing energy consumption, sequestering carbon in forests and agricultural land, and post-combustion/pre-release capture of carbon dioxide for storage in geological structures such as saline aquifers and depleted oil wells.

The latter shows great strategic promise, but raises important legal issues. Richards' research addresses potential damage to health and natural resources, property rights issues related to the migration of carbon dioxide and forced unification of fields, and state and federal regulatory issues. His work provides guidance to environmental regulators, public utility commissions, and power companies.





Conference photos by Ann Schertz

Conference investigates constitutions and gender equality

Lawyers, political scientists, anthropologists, and officials and activists from countries such as Liberia, Burma, and Iraq participated in a series of thematic panels during Indiana Law's "Constituting Equality" conference, held March 23–24. Experts from six continents put constitutional mechanisms for promoting gender equality in the spotlight and offered cutting-edge scholarly analysis on: religious/customary law and its impact on gender equality; electoral gender quotas; reproductive and other substantive rights; and the role of women in the process of constitution-making. Challenges facing both existing constitutions and those on the drafting table and tools for addressing them came into sharp focus during conference conversations.

Harvard publishes Latino conference scholarship

Through the lens of past experiences and lessons, 20 prominent panelists examined hot-button issues during Indiana Law's recent conference, "Latinos and the Law: Is Our Past Also Our Future?" Their discussions will inform future discourse, law, and policy surrounding a growing and important Latino population.

The event, organized by professors Christiana Ochoa and Luis Fuentes-Rohwer, attracted some of the country's most prominent and influential Latino scholars.

"May Day marches for immigrant rights, the emergence of vigilante groups on the U.S./Mexico border, continued disputes regarding the status of Puerto Rico, the sense that our educational system is not fully meeting the particular needs of the Latino population, and many more highly relevant subjects illustrate concern from the Latino population about the protections they enjoy and difficulties they currently experience," Ochoa said. Work addressing these pressing modern challenges facing the Latino community will appear in the *Harvard Latino Law Review* (Spring 2008, vol. 11).

In addition to publishing in the *Review*, conference debate inspired participants to propose a forum for addressing legal issues particular to Latinos on a regular basis. Fuentes-Rohwer and Ochoa are now working to



recruit a team of the most highly regarded Latino legal academics to contribute to a special volume on Latinos and the law.



Global firms, corporations address data security conflicts

In this age of the digital workplace, laws related to data protection and privacy are growing more integral — and more complex. At an Indiana Law conference, "U.S. Document Production and International Data Protection: Managing Conflicting Requirements," representatives from more than 20 multinational companies and law firms convened to address conflicting elements of U.S. discovery requirements and national data protection laws.

The U.S. Rules of Civil Procedure make it a legal obligation for companies to protect, search, and produce all relevant records sought under a subpoena or court order. These requirements apply to all documents — including e-mails, instant messages, and other electronic documents — no matter where or in what form they exist.

Yet, in terms of storing, searching, and disclosing employees' e-mail and electronic documents as well as other employee and customer records, multinational and foreign companies must also consider the comprehensive data protection laws of Europe and other nations.

The brainchild of Indiana Law Professor Fred H. Cate, a leading expert in cybersecurity law and director of the Center for Applied Cybersecurity Research, this informal, interactive workshop served as a forum for shaping answers to an important question for business leaders and legal professionals: how will companies manage the risk?

IN ATTENDANCE

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- Axiom Corp.
- AstraZeneca International
- Baker & Daniels LLP
- Baker & McKenzie
- Deere & Co.
- Drinker Biddle & Reath LLP
- Eli Lilly & Co.
- Fulbright & Jaworski
- General Motors Corp.
- Hunton & Williams
- IBM Corp.
- Ice Miller
- JP Morgan Chase & Co.
- Motorola Inc.
- Planet Data Solutions Inc.
- The Principal Financial Group
- Privacy & Information Management Services RCI
- Redgrave Daley Ragan & Wagner LLP
- Thomson Corp.
- U.S. District Court for the Southern District

ELS hosts major global warming event



by Sarah Preuschl

Al Gore's Oscar-winning documentary, *An Inconvenient Truth*, made global warming a sexier issue. First-year student, Jay Heeter wanted to make ripples locally.

So Heeter, now president of Indiana Law's Environmental Law Society, urged ELS to commit to grassroots awareness, to have an impact on environmental legal issues today and right here in Bloomington.

"It is so important for law students and lawyers to get involved in the community on issues they are passionate about. In many ways, lawyers are expected to take the lead on public issues," he said.

Together with the Indiana Public Interest Research Group and the Indiana Memorial Union Board, ELS organized an address from naturalist Jeff Reigel, one of the first 50 people worldwide licensed to deliver Gore's message. A diverse audience — 200 attendees drawn from area student, community, and faith organizations — filled IU's Whittenburger Auditorium for the mid-March ELS presentation.

"Our farmers and industries in Indiana are learning that they can struggle with the effects of a changed climate or instead benefit from producing clean fuels and installing wind turbines and solar facilities," said Heeter,



Photo by Patty Koski

Indiana Law's Environmental Law Society gained momentum in 2007 — nationally and in Bloomington. Here, ELS students persuade community members to sign a petition for legislative action.

who organized an ELS legislative action committee.

"I believe global warming is the greatest environmental threat that the world faces. ELS is in a great position to educate people about personal and public ways to address climate change."

Bloomington and IU are addressing the issue through the recently formed Bloomington Commission on Sustainability and an IU Sustainability Task Force to study the university's day-to-day impact on global warming.

Heeter brings years of grassroots experience with

Green Corps and the Alaska Coalition to ELS. This new perspective adds a fresh dynamic to the Indiana Law chapter. The growing student group is taking the lead among environmental law societies. Indiana brought more bodies to the 2007 NAELS conference than most any other school, second only to Vermont, ranked No. 1 among environmental law programs.

Recently elected national co-chair, Heeter begins his role building the organization internally and planning 10 regional "Campus Climate Neutral" events to be held this summer.

International, privacy issues infuse 2007 moot court



Photo by Ann Schertz

Finals champion Renee Beaver is putting her oral advocacy talents to work this summer as an associate with McTurnan & Turner, an Indianapolis firm specializing in complex business litigation.

Second-year students Renee Beaver and Mickey Weber clinched this year's title as 2007 Sherman Minton Moot Court Competition winners at the February finals.

Beaver, Weber, and fellow finalists Greg Knapp and Jeffrey Peabody stood out among a pool of more than 150 competitors in this annual, student-run competition sponsored by Bose McKinney & Evans.

This year's problem: *Mertens v. Raines, Charlevoix, and the City and County of Arcadia*. The sophisticated problem dealt with issues ranging from law enforcement's use of cell phones as tracking devices to Hurricane Katrina and the role of international law on the U.S. legal system.

Indiana Law's moot court program has long been recognized for preparing outstanding oral advocates. The distinguished judging panel — including judges from the 6th, 7th, and 10th circuits and the Indiana Court of Appeals, as well as Greg Castanias, JD'90, a Supreme Court practitioner for Jones Day in Washington, D.C. — praised the complexity of the student-written problem and the preparedness of student finalists.

More than 200 Indiana Law alumni judges volunteer each year to make the popular competition possible.



APPELLATE ADVOCACY IN THE CLASSROOM

Valuable appellate advocacy skills honed through the moot court competition are taking on an academic shape in Appellate Advocacy (B642), a course designed to augment Indiana Law's moot court program.

Professor Seth Lahn leads students in coursework focusing on the technique, theory, and practice of oral advocacy. Students build professional skills through audio and video analysis of actual oral arguments held before state and federal appellate courts, in-class simulations, and detailed investigations of argument strategies.

Supreme Court emissions ruling demands action



Professor Jim Barnes, former SPEA dean and EPA deputy administrator, says it's time for the White House and EPA to get serious about decisive regulation.

The Supreme Court's recent decision in *Massachusetts v. EPA* — rejecting the Bush administration's position that the EPA lacked the authority to regulate greenhouse gas emissions from automobiles — could well serve as a catalyst for action to address greenhouse gas emissions in the United States.

In 1999, 19 private organizations petitioned EPA to utilize its authority under Section 201 of the Clean Air Act, which states that the EPA administrator “shall by regulation” prescribe standards for emission of air pollutants from motor vehicles “which in his judgment cause or may contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.”

Massachusetts, 11 other states, three cities, and 10 environmental groups then sued EPA. Reversing the opinions of two former agency general counsel who had concluded previously that EPA did have legal authority to address greenhouse gases like carbon dioxide, the Agency denied the petition on the grounds that it believed it lacked the legal authority to do so and then went on to add that, even if it did not have the authority, it would not exercise it for a variety of policy reasons.

The Supreme Court concluded that EPA did have legal authority to regulate greenhouse gases and held that it had acted “arbitrarily and capriciously” in relying on factors not enumerated in the statute to refuse to regulate such emissions.

Four justices, led by Chief Justice Roberts, would have barred the action by Massachusetts and the other petitioners on the grounds that they did not have the requisite “standing” to bring the action. Indeed, after reading the briefs and hearing the oral argument, many observers were concerned that the court might use this case to adopt a new, more restrictive view of standing. Litigation — and in particular “citizen suits” authorized by the major environmental statutes that permit



Photo by Ann Schertz

citizens to act as private attorneys general to enforce “non-discretionary duties” embedded in the statutes — have been a very significant factor in enforcing the environmental regulatory scheme.

Making it more difficult for such suits to be brought could result in the loss of an important “safety valve” for citizens to force action when government refuses to perform its statutory obligations. However, the court majority found that, in this instance, Massachusetts occupied a “special position” and that it satisfied the constitutional test for presenting a justiciable Article III controversy.

Initially, the case puts the ball back in EPA's court to again address global warming, but with much more limited discretion to determine whether and how it might regulate greenhouse gas emissions from automobiles. At the same time, it is now clear that

both the Bush administration — and subsequent administrations — have the authority to develop a program to address greenhouse gases even without further Congressional action. This should further inject the issue into the 2008 presidential campaign, put pressure on Congress to shape its preferred approach, and give states like California additional tools to force action to address the issue. ●

Professor A. James Barnes teaches environmental law at IU School of Law—Bloomington and the School of Public and Environmental Affairs. In 1970, he participated in the formation of EPA, serving as chief of staff to the first administrator, William Ruckelshaus, and later as EPA general counsel and deputy administrator.

